

Document No. 63
(Whitney Lease)

Adopted at Meeting of 5/ 27/ 59

This Agreement made on the 1st day of June
1959 between BOSTON REDEVELOPMENT AUTHORITY, a public body
politic and corporate, duly organized and existing under the
laws of the Commonwealth of Massachusetts, which, together
with any successor public authority designated by, or pur-
suant to, law, is herein called "the Authority," and BEACON
REDEVELOPMENT CORPORATION, a corporation organized and
existing under the laws of said Commonwealth, herein called
"the Redeveloper,"

W I T N E S S E T H T H A T:

WHEREAS, in furtherance of the objectives of
Chapter 121 of the General Laws of said Commonwealth the
Authority proposes to undertake a program for the clearance
of premises in the Roxbury section of Boston, Suffolk County,
Massachusetts, bounded generally by Huntington Avenue, Longwood
Avenue, St. Alphonsus Street, Tremont Street and Worthington
Street, which premises are herein called "the Project Area";
and

WHEREAS, the Authority has approved a plan herein
called "the Redevelopment Plan" providing for the clearance
and redevelopment of the Project Area and the future uses of
the land comprising it, duplicate copies of which plan have

been marked "Schedule A" and initialled and exchanged by the parties; and

WHEREAS, the Authority believes that the redevelopment of the Project Area pursuant to the Redevelopment Plan and the fulfillment generally of this Agreement and the intention set forth herein are in the best interests of the City of Boston, herein called "the City," and the health, safety, morals and welfare of its residents in accordance with the public purposes and provisions of applicable laws; and

WHEREAS, the Authority, on the basis of the foregoing and the undertakings of the Redeveloper pursuant to this Agreement, is willing to lease a portion of the Project Area in accordance with the provisions of the Redevelopment Plan and this Agreement,

NOW, THEREFORE, each of the parties hereto, for and in consideration of the agreement of the other party hereto, hereby covenants and agrees that:

ARTICLE 1

Delivery of Lease of a Portion of the Project Area

Subject to all the terms, covenants and conditions of this Agreement, the Authority will lease to a Massachusetts corporation to be organized by the Redeveloper as hereinafter set forth under the provisions of Chapter 121A of the

Massachusetts General Laws, herein called "the 121A Corporation," a portion of the Project Area. Said lease, herein called "the Lease," shall be in the form attached hereto marked "Schedule B" and the portion of the Project Area to be leased hereunder is described in Schedule C attached hereto. Prior to the delivery of the lease, an accurate survey of the premises described in said Schedule C shall be made by the Authority and a description based on said survey shall be prepared and attached to said Lease as Schedule A thereof. The amount to be filled in in the blank on Page 2 of the Lease shall be determined by the Federal Housing Administration and shall be filled in prior to the delivery of the Lease. Duplicate counterparts of the Lease shall be executed and delivered within ten (10) days after the Authority has given written notice to the Redeveloper under Article 3 hereof when it has accomplished the taking and the clearance and preparation of the premises described in Schedule C. Said Lease shall demise a good and clear record and marketable title to the leasehold estate thereunder for the full term described in said Lease free and clear of all encumbrances.

ARTICLE 2

Formation of 121A Corporation and Obtaining of Financing Commitments

The Redeveloper shall exercise due diligence to:

(a) Organize and obtain a charter for the 121A Corporation;

(b) Obtain

(1) from a bank or insurance company a commitment or commitments to lend to the Redeveloper or its nominee a sum sufficient to finance the cost to the Redeveloper of the construction of improvements on the premises described in

Schedule C in accordance with the provisions of Article 4 hereof:

(2) from the Federal Housing Administration a commitment to insure such financing under the provisions of Section 220 of the National Housing Act of 1954; and

(3) from the Federal National Mortgage Association a commitment to purchase the note evidencing such financing and the mortgage of the leasehold interest under said Lease securing such note.

Promptly after a charter for the 121A Corporation has been issued and such commitments have been obtained, the Redeveloper will give written notice of such fact to the Authority. If on or before December 1, 1959

(a) such charter has not been obtained, or

(b) such commitments have not been obtained, or

(c) the City Council of the City and the State Housing Board have not taken all action which may be required to enable the Authority and the City to do all things necessary for the performance of this Agreement by the Authority, including, without limitation, such action by the City Council of the City as may be required to enable the City to provide financial aid to the Authority necessary for the carrying out of the Redevelopment Plan and this Agreement, or

(d) the City has not entered into a cooperation agreement with the Authority to take all action of the kind referred to in subparagraph (c) above,

either party may then, or at any time thereafter while said charter or said commitments have not been obtained or said action of the City Council and the State Housing Board has not been taken or said cooperation agreement with the City has not been entered into, elect to cancel this Agreement by giving written notice of such election to the other party, and in such event, unless within thirty (30) days after the giving of such notice said charter or said commitments have been obtained and said action of the City Council and the State Housing Board has been taken and said cooperation agreement with the City has been entered into, this Agreement shall be void and without recourse to either party and the deposit referred to in Article 6 hereof shall be returned to the Redeveloper; provided, however, that if the Redeveloper shall have failed to use due diligence to obtain such charter or such commitments, said deposit shall be retained by the Authority as liquidated damages as provided in Article 6 hereof.

ARTICLE 3

Taking and Preparation of Project Area for Redevelopment

Promptly after (i) the Redeveloper has given notice as provided in Article 2 that the charter of the 121 A Corporation has been issued and the commitments referred to in said Article 2 have been obtained, (ii) the City Council of the City and the State Housing Board have taken all action which may be required to enable the Authority and the City to do all things necessary for the performance of this Agreement by the Authority, and (iii) the City has entered into a cooperation agreement with the Authority to take all such action of the kind referred to in the foregoing clause (ii), the Authority shall use diligence to take the Project Area by eminent domain and thereafter to clear and prepare it for purposes of the redevelopment thereof in accordance with the

terms of the Redevelopment Plan. In any event, such taking shall be completed within two (2) years after all of the events designated (i), (ii) and (iii) in the next preceding sentence have occurred, and such clearing and preparation with respect to the premises described in Schedule C shall be completed within said two-year period and with respect to the remainder of the Project Area shall be completed within the period of three (3) years after all of said events have occurred, notwithstanding in either case delays beyond the control of the Authority.

The clearance and preparation of the Project Area referred to above shall consist of the performance by the Authority or by the City of all demolition, clearance and street and utility work substantially as outlined in the Redevelopment Plan and shall include, without limitation, the following:

(a) The demolition and removal to grade of all existing buildings, structures and obstructions on the Project Area and the removal of any debris resulting from such demolition;

(b) The removal of all paving, sidewalks, curbs, gutters and utility lines, facilities and related equipment within or on the Project Area which are to be eliminated or removed pursuant to the Redevelopment Plan;

(c) Such filling, roughgrading and leveling of the land (but not including filling with topsoil or landscaping) as shall be necessary to make it ready for construction of the improvements to be made thereon by the Redeveloper, it being

intended that such filling, roughgrading and leveling shall conform generally to the respective surface elevations of the land prior to the demolition of the buildings and structures thereon.

The Authority shall, without expense to the Redeveloper or public assessment by the Authority or by the City against the Project Area, and prior to the completion of the improvements as provided in Article 4, provide for or cause the City to provide for

(a) the vacating of present streets, alleys and other public rights of way and the dedication of new streets and other public rights of way in or abutting the Project Area in accordance with the Redevelopment Plan,

(b) the paving and improving in accordance with the usual technical specifications and standards of the City of such public streets (including the installation of gutters, curbs, catch basins and street lighting) and sidewalks as are to be provided pursuant to the Redevelopment Plan, and

(c) the installation and relocation of such drains and sewer and water mains (exclusive in each case of service lines between such mains and lines and the building to be constructed by the Redeveloper) as are to be installed or relocated pursuant to the Redevelopment Plan.

Promptly after the completion of the taking of the Project Area and the clearance and the preparation of the

premises described in Schedule C, the Authority shall give written notice thereof to the Redeveloper and promptly after the clearance and preparation of the remainder of the Project Area the Authority shall give like written notice to the Redeveloper.

The Authority agrees to defend, save harmless and indemnify the Redeveloper from all claims arising on account of any injury or damage to any person or property which occurs on any portion of the Project Area that has been taken by the Authority pursuant to the provisions of this Article 3, or on the sidewalks and ways adjacent to such portion, provided such injury or damage occurs prior to the time when such portion is leased pursuant to the provisions of this Agreement.

If the Authority shall for any reason have failed to take the Project Area or to clear and prepare the leased premises as provided above, the Redeveloper may elect to cancel this Agreement by giving written notice to the Authority within twenty (20) days after the occurrence of such failure, and in such event the cash deposit made hereunder by the Redeveloper shall be forthwith returned, the Redeveloper shall be under no further liability hereunder and, provided that it has used due diligence to perform its obligations hereunder, the Authority shall be under no further liability hereunder.

ARTICLE 4

Construction of Improvements

Subject to the foregoing provisions of this Agreement, the Redeveloper agrees to construct, or to cause the 121A Corporation to construct, upon the premises described in Schedule C a "high-rise" type of apartment building containing approximately 270 dwelling units substantially in accordance with preliminary plans thereof which the Redeveloper has filed with the Authority. The Redeveloper and/or the 121A Corporation shall have the right to select a general contractor for the construction of said apartment building and all subcontractors, but before any construction work is undertaken, the Redeveloper and/or the 121A Corporation shall deliver to the Authority a payment and performance bond in an amount not less than the amount of the construction contract and in such form and written by such surety company

as the Authority shall approve, such approval not to be unreasonably withheld. Such bond shall run in favor of the Authority, the Redeveloper and/or the 121A Corporation, any lending institution financing the construction, and, if such financing is insured by the Federal Housing Administration, the Federal Housing Commissioner, herein called "the Commissioner".

Construction work by the Redeveloper and/or the 121A Corporation shall begin within one (1) year after the Lease of the premises described in Schedule C has been delivered pursuant to the provisions of Article 1. The construction by the Redeveloper shall be complete not later than eighteen (18) months after it has commenced, or, if the construction is financed by a loan insured by the Federal Housing Administration, within such other time (later or earlier than said eighteen-month period) as is specified in the applicable building loan agreement approved by the Federal Housing Administration. In any event, however, the time for beginning of construction and for completion shall be extended for such period as shall be equal to the period of any delay resulting from causes not due to fault or neglect of the Redeveloper, including, but not limited to, the following: strikes or other labor disputes, shortages of materials not within the control of the Redeveloper, acts of God or public enemy, fires, floods

and weather of unusual severity, such as, hurricanes, tornadoes, cyclones and other extreme weather conditions.

ARTICLE 5

Anti-Speculation and Assignment Provisions

The Redeveloper represents and covenants and agrees that its undertakings pursuant to this Agreement will be used for the purpose of development of the Project Area in accordance with the Redevelopment Plan and not for speculation in land holding. The Redeveloper further recognizes that the qualifications and identity of the Redeveloper and its stockholders and of the 121A Corporation and its stockholders are of particular concern to the community and the Authority. The Redeveloper further acknowledges that the Authority has taken such qualifications and identity into account before entering into this Agreement with the Redeveloper.

For the foregoing reasons, the Redeveloper represents and agrees for itself, its stockholders and any successor in interest of itself and its stockholders:

- (a) That prior to the full performance of this

Agreement by the Redeveloper there shall be no voluntary transfer by the present holder of any stock of the Redeveloper (which term shall be deemed, for the purposes of this and related provisions, to include successors in interest) without the approval of the Authority, nor shall there be without such approval any of the following affecting the Redeveloper, viz.: increased capitalization, merger with another corporation, corporate or other amendments, issuance of additional stock or reclassification of stock. No approval of the Authority required under the foregoing provisions shall be unreasonably withheld.

(b) That at all times prior to the full performance of this Agreement by the Redeveloper all of the authorized stock of the 121A Corporation will be held by the Redeveloper and/or by the present stockholders of the Redeveloper, namely, Ernest Henderson, Robert M. Morgan, William J. Furlong, Carleton Hunneman and M. Murray Weiss, or their executors or administrators, subject, however, in either case, to the presently existing option in favor of Charlesbank Homes, a Massachusetts charitable corporation, to acquire all of said issued and outstanding stock of the 121A Corporation and/or of the Redeveloper for a nominal sum.

(c) That except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Redeveloper to perform its obligations under this Agreement,

the Redeveloper has not made or created, and will not make or create, or suffer to be made or created, any total or partial sale, assignment or transfer in any other mode or form, of or with respect to this Agreement or any interest therein, or any agreement to do any of the same, without the prior written approval of the Authority which the Authority in its sole discretion may withhold.

ARTICLE 6

Default by the Redeveloper

In order to secure the performance by the Redeveloper of all of its obligations hereunder, the Redeveloper agrees to deposit with the Authority the sum of fifty thousand (50,000) dollars in cash within ten (10) days after the City Council of the City has taken all action which may be required to enable the Authority and the City to do all things necessary for the performance of this Agreement by the Authority, including, without limitation, such action as may be required to enable the City to provide financial aid to the Authority necessary for the carrying out of the Redevelopment Plan and this Agreement. Said sum shall be held in escrow by the Authority to be applied by the Authority or returned to the Redeveloper as provided in this Agreement.

If the Redeveloper shall deliver the payment and performance bond referred to in Article 4 hereof, the Authority shall forthwith return to the Redeveloper said sum of fifty thousand (50,000) dollars held by it hereunder.

If the Redeveloper shall default in the performance of any of its obligations hereunder, prior to the time when it delivers or becomes obligated to deliver the payment and performance bond referred to in Article 4 hereof, and within thirty (30) days after written notice from the Authority of

such default has not cured the same, or used due diligence to cure the same if such default cannot be reasonably cured within said thirty-day period, the Authority may at any time thereafter terminate this Agreement by written notice to the Redeveloper and upon such termination the Authority shall retain the original deposit of fifty thousand (50,000) dollars made hereunder as liquidated damages for such default and termination.

The Authority in any event agrees to look only to the rights above given to it in the said fifty thousand (50,000) dollar deposit for the satisfaction of all obligations of the Redeveloper hereunder.

ARTICLE 7

Notices

All notices hereunder shall be in writing and deemed to be duly given if mailed by registered mail, return receipt requested and addressed in the case of the Authority to it at 73 Tremont Street, Boston, Massachusetts, and in the case of the Redeveloper to it at 60 State Street, Boston 9, Massachusetts, or to such other address in respect to either party as that party may from time to time designate by written notice given to the other as herein provided.

ARTICLE 8

Time of the Essence

The parties agree that time is of the essence of all of the provisions hereof.

EXECUTED as a sealed instrument in duplicate the day and year first above written.

BOSTON REDEVELOPMENT AUTHORITY

By: *F. J. Kelly*
via [signature]

BEACON REDEVELOPMENT CORPORATION

By: *William J. Hartung*
Treasurer

June 1, 1959

Boston Redevelopment Authority
73 Tremont Street
Boston, Massachusetts

Gentlemen:

Referring to the Agreement between us of even date and delivery herewith relating to the Whitney Street Project, it is agreed that when the Lease referred to therein is delivered:

1. There shall be inserted in Article I as the date for the beginning of the term the date on which the Lease is delivered.

2. There shall be inserted in the blank space at the end of the rider on Page 36 of the Lease the names of a reasonable number of children then living in the Boston area and those names shall be designated by us.

3. There shall be executed and delivered for the purpose of recording a Notice of Lease under the provisions of Massachusetts General Laws, Chapter 183, Section 4.

If this is in accordance with your understanding, please sign and deliver to us the enclosed carbon copy of this letter.

Very truly yours,

BEACON REDEVELOPMENT CORPORATION

By: _____

Accepted and agreed to:

BOSTON REDEVELOPMENT AUTHORITY

By: _____